

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 280 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

2 to 5 No

-----  
COMMISSIONER OF INCOME TAX

Versus

ARUNA MILLS LTD.  
-----

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner  
SERVED BY RPAD - (N) for Respondent No. 1  
-----

CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 07/04/99

ORAL JUDGEMENT (Per A.R.Dave,J.)

At the instance of the revenue, Income Tax Appellate Tribunal, Ahmedabad Bench 'C' has referred to this Court the following questions of law arising out of an order passed by the Tribunal under the provisions of Section 256(1) of the Income Tax Act, 1961 (hereinafter

referred to as 'the Act').

"(1) Whether on the facts and in the circumstances of the case, the reimbursement of medical expenses to Managing Directors could not be considered as disallowance for the purpose of computation under sec.40(c) of the I.T. Act, 1961?

(2) Whether, the appellate tribunal has been right in law in holding that for the purpose of sec.40(c) the payment of premium for the personal accident insurance of the Managing Director could not be treated as disallowance while computing the same under sec.40(c) of the I.T.Act, 1961?

(3) Whether, on the facts and in the circumstances of the case, the appellate tribunal has been right in law in holding that the assessee is entitled to extra-shift allowance on exhaust fans costing Rs.18246/- fitted in factory premises?

(4) Whether, on the facts and in the circumstances of the case, the Appellate tribunal has been right in law in holding that for the purpose of sec.40A(5) of the I.T.Act, 1961, the amount of cash payment of house rent allowance amounting to Rs.50752/- paid to the employees did not form part of salary?"

2. Learned Advocate Shri B.B.Naik has appeared for the Revenue, but nobody has appeared for the respondent assessee though the respondent assessee has been duly served with the notice.

3. So far as question No.1 is concerned, it pertains to reimbursement of medical expenses to the Managing Directors. The said amount was disallowed by the I.T.O. as it was treated as benefit or amenity within the meaning of Section 40(c) of the Act. An appeal was filed against the said order by the assessee before the Commissioner of Income Tax (Appeals). As the appeal was dismissed and the order of the I.T.O. was upheld by the Commissioner of Income-Tax (Appeals), the assessee had filed an appeal before the Tribunal. The Tribunal held that the reimbursement of the medical expenses to the Managing Directors should not be considered as remuneration or amenity or benefit under the provisions of Section 40(c) of the Act. In the circumstances, at the instance of the revenue, reference has been made to this Court.

4. The question referred to hereinabove is no more res-integra in view of the judgment delivered by this Court in the case of Gujarat Steel Tubes Limited Vs. Commissioner of Income-Tax, 210 I.T.R. 358 and in the case of Commissioner of Income Tax Vs. Sympol Products Private Limited, 217 I.T.R. 154. It has been held in both the cases referred to hereinabove that the phrase "any remuneration, benefit or amenity" is of wide amplitude and it covers benefit or amenity in cash or in kind. In the circumstances, it has been held in both the cases that reimbursement of medical expenses to the Managing Directors should be considered as disallowance for the purpose of computation under the provisions of Section 40(c) of the Act. In the circumstances, we answer question No.1 in negative i.e. against the assessee and in favour of the revenue.

5. So far as question No.2 is concerned, it is also no more res-integra. This Court had an occasion to consider a similar question in the case of Ambica Mills Limited Vs. Commissioner of Income-Tax, 231 I.T.R. 583. It has been held in the said case that when any expenditure is incurred on remuneration or benefit or amenity to the Director, the said expenditure would be covered under the provisions of Section 40(c) of the Act. In the circumstances, question No.2 is answered in negative i.e. against the assessee and in favour of the revenue.

6. So far as question No.3 is concerned, learned advocate Shri Naik has submitted that the said question has been squarely covered by the judgment delivered by this Court in Income-Tax Reference No.70/84 in the case of Saraspur Mills Ltd. in favour of the revenue and against the assessee. It has been held in the said case that extra shift allowance is not allowable on exhaust fans. In the circumstances, the said question is replied in negative, i.e., in favour of the revenue and against the assessee.

7. So far as question No.4 is concerned, it pertains to cash payment of house rent allowance amounting to Rs.50752/- to the employees of the respondent assessee. Income Tax Officer held that the said amount paid to the employees would form part of their salaries for the purpose of provisions of section 40A(5) of the Act. Appeal was filed against the said order and in the appeal the Commissioner of Income Tax (Appeals) upheld the order of I.T.O. Being aggrieved by the said order, the revenue had filed the appeal before the Tribunal and the Tribunal

came to the conclusion that the house rent allowance of Rs.50752/- would not be hit by the provisions of Section 40A(5) of the Act. In the circumstances, at the instance of revenue, reference has been made. Looking to the judgment delivered in the case of C.I.T. Vs. Vickers Sperry of India Limited, 216 I.T.R. 861, cash payment of house rent allowance paid to the employees cannot be disallowed under the provisions of Section 40A(5) of the Act. There is no reason for us to disagree with the view expressed in the judgment delivered in the case referred to hereinabove. In the circumstances, we answer the question in affirmative, i.e., in favour of the assessee and against the revenue.

Reference thus stands disposed of with no order as to costs.

---